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ORDER SHEET
WPO No.809 of 2023
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

SRI RABIN PAUL @ RAGHU PAUL & ANR.
VS.
THE KOLKATA MUNICIPAL CORPORATION & ORS.

BEFORE:
The Hon'ble JUSTICE AMRITA SINHA
Date: 5th April, 2023.

Appearance:
Mr. Sounak Bhattacharya, Adv.
Mr. Sumitava Chakraborty, Adv.
....for the Petitioners.

Mr. Subhrangsu Panda, Adv.
Ms. Ina Bhattacharya, Adv.
... for K.M.C.

The Court:-The premises no.129, Raja Ram Mohan Roy Road, Ward No.122, Borough-XIII & XIV, Kolkata-700008 is suffering an order of demolition passed by the Special Officer (Building), Kolkata Municipal Corporation on 29.11.2022. The order of demolition was communicated to the petitioners by the Assistant Engineer (Civil)/Building, Borough-XIII & XIV by communication dated 22.02.2023.

The petitioners submit that they intend to prefer an appeal against the order of demolition and, as such, applied for obtaining certified copy of the demolition order before the authority and the same was supplied on 23.03.2023.

On 28.03.2023 a notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 was affixed on the outer wall of the subject premises. The said notice mentions that the men and agents of the Kolkata Municipal Corporation will enter the premises on 05.04.2023 i.e. today for causing demolition of the unauthorized construction in terms of the order

passed by the Special Officer (Building), Kolkata Municipal Corporation on 29.11.2022.

Admittedly, the order of demolition is an appealable one. The petitioners have expressed their desire to prefer an appeal and have obtained certified copy of the impugned order of demolition.

The order dated 29.11.2022 was communicated to the petitioners after lapse of more three months on 22.02.2023.

According to Section 400(3) of the Kolkata Municipal Corporation Act, 1980 an aggrieved party may prefer an appeal before the appellate forum within 30 days' from the date of the order. The time period for obtaining the certified copy of the impugned order is required to be deducted from the aforesaid stipulated period of 30 days.

In view of the above, the petitioners are granted liberty to approach the appellate forum positively by 12.04.2023. The petitioners will be at liberty to pray for stay of the impugned order of demolition by making appropriate application. In the event an application for stay of the impugned order of demolition is made, the same shall be considered by the Tribunal at the earliest.

The men and agents of the Kolkata Municipal Corporation are restrained from giving effect to the impugned notice under Sections 544 & 546 of the Kolkata Municipal Corporation Act, 1980 dated 28.03.2023 till 19.05.2023 or until further order, whichever is earlier.

The concerned Executive Engineer of the Kolkata Municipal Corporation is directed to immediately transmit the records of the instant case before the Tribunal as soon as the same is called for by the Tribunal.

Learned advocate for the Kolkata Municipal Corporation is directed to communicate this order to the concerned officer of the Kolkata Municipal Corporation.

The writ petition stands disposed of.

Affidavit of service filed in Court today is taken on record.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(AMRITA SINHA, J.)

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